Alianza Dominicana and Union of Needletrades Industrial and Textile Employees, AFL-CIO, CLC and Iris Almanzar and Cecilia Salcedo. Cases 2-CA-27709, 2-CA-27785, and 2-CA-28755

June 30, 1998

DECISION AND ORDER

BY MEMBERS FOX, HURTGEN, AND BRAME

On November 25, 1997, Administrative Law Judge Eleanor MacDonald issued the attached decision. Charging Party Almanzar filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

¹The Charging Party has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. We further find no merit in the Charging Party's contention that she was denied due process.

Terry A. Morgan, Esq., for the General Counsel. Rita A. Hernandez, Esq. (Schulte, Roth & Zabel), of New York, New York, for the Respondent.

Wilfredo Larancuent, of New York, New York, for the Charging Party Union.

DECISION

STATEMENT OF THE CASE

ELEANOR MACDONALD, Administrative Law Judge. This case was heard in New York, New York, on 6 days between September 25, 1996, and January 31, 1997. The consolidated amended complaint alleges that Respondent, in violation of Section 8(a)(1), (3), and (4) of the Act, suspended and discharged Guadalupe Rodriguez and then refused to reinstate Rodriguez, lowered the evaluation of and discharged Iris Almanzar, discharged Cecilia Salcedo, and interrogated employees about their support for the Union. The Respondent denies that it has engaged in any violations of the Act.

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a domestic corporation with an office and place of business in New York, New York, is engaged in the operation of a social service agency. Annually, Respondent derives gross revenues in excess of \$250,000 of which in excess of \$50,000 is received from the City of New York. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union of Needletrades Industrial and Textile Employees, AFL–CIO, CLC is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

Respondent Alianza Dominicana is a social service agency founded in 1987 by a group that was active in the Dominican community of upper Manhattan. At first, Alianza operated out of a store front with very few employees, but in the years 1989-1990, Alianza secured funding to expand its operations and 30 to 40 new people were hired. In 1990-1991, another 30 to 40 employees were added as existing community service projects were expanded and new projects were undertaken. By 1994, the staff numbered from 70 to 80 employees. Although Alianza no longer conducted its mission from a store front, it still displayed the characteristics of a fledgling organization. For example, Alianza was severely criticized for failing to keep adequate records to document the provision of drop-out prevention services to students at various high schools. As the testimony in the instant case was presented, it became obvious that Alianza did not have personnel procedures and rules in existence which were adequate to deal with its growing number of employees. Respondent did not maintain personnel files in a timely and efficient manner and it did not have a practice of placing a written record of warnings and comments in the personnel files of employees. The lack of certain policies and procedures during the time relevant to the instant case led to favoritism and an atmosphere of intrigue.

Moises Perez, a founder of Alianza Dominicana in 1987, serves as its executive director. Alianza is governed by a board of directors, but the precise degree of involvement of the Board in the affairs of the agency is not clear on the record.

In 1993, Alianza undertook to change its internal governance procedures. A steering committee was created with the responsibility to set policies for the agency, to make decisions concerning the administration of agency programs and operations and to insure that the agency's mission is implemented. The steering committee began work in July 1993. It meets every Friday morning at 9 a.m. In addition to the policy and decision-making functions set forth above, the steering committee also works on the expansion of Alianza's services by designing new programs and searching for funds to support them, it determines job descriptions for employees, designs the forms and the process to be used in conducting employee evaluations, decides how many holidays will be granted to employees, chooses a health insurance carrier and determines health benefits, discusses the disciplining of specific employees, and is the forum for discussions about hiring and firing specific employees. The committee drafted a personnel policy manual and it approved the final draft before it was submitted to the board of directors for ultimate approval. According to Raymond Saltini, who became the special assistant to Executive Director Perez in 1992 and was

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named director of administration in November 1994, a decision to terminate an employee is always announced at a steering committee meeting and is subject to the committee's final decision. When budget cuts necessitate that employees be laid off, the steering committee decides which budget lines will be eliminated and which employees will be let go. The steering committee has 12 to 15 members, including the executive director, the director of administration, the director of personnel and the various program directors.

A major function of the steering committee at its inception was to oversee an initiative called the service integration plan. Service integration was an attempt to insure that Alianza's employees work with entire families as opposed to only individuals within the family. This concept had always been a keystone of the agency's philosophy, but Alianza had grown so much that service integration could no longer be done informally. Procedures had to be written down and followed. The agency spent many hours implementing its service integration plan and it raised money to support the initiative and hired a consultant to help the process succeed. In 1993, the steering committee developed the mechanisms for service integration including the reorganization of Alianza's programs and staff training. A meeting off the premises of Alianza, called a retreat, was planned for the summer of 1994 in order to asses the implementation and success of the service integration plan. Certain problems concerning service integration remained to be resolved and it was expected that the steering committee would return from the retreat with a plan of action to be presented to the staff. Planning for the retreat went on for several months and a facilitator was engaged to help run the retreat. Attendance at the retreat was mandatory for steering committee members.

Wilfredo Larancuent, the organizing director for the Union here, had been acquainted with Guadalupe Rodriguez, Alianza's director of immigration, since 1986 through their joint participation in community service activities. Following a telephone call from Rodriguez, she and Larancuent met on July 29. Rodriguez told Larancuent that she had heard that she was going to be fired. Rodriguez and Larancuent discussed organizing Respondent, and at Larancuent's behest, Rodriguez told him about some problems at the agency. Larancuent told Rodriguez that the Union was not ready to commit to an organizational campaign. Rodriguez asked Larancuent for a union authorization card and she later signed a card which she dated August 1, 1994. In early August, the Union decided to commence an organizing drive at Alianza. Beginning on August 8, a number of employees, including Rodriguez, signed a sheet authorizing the Union to represent them.1 The Union demanded recognition in a letter dated September 16. The Union filed a petition for representation on September 23, 1994.

B. Credibility of the Witnesses

Guadalupe Rodriguez testified at length in the proceeding.² Rodriguez was an extremely uncooperative witness. She resisted identifying documents bearing her signature and she persisted in denying facts set forth in documents which were shown to her. On countless occasions, Rodriguez flatly de-

nied facts that were proven to exist by documentary evidence. Rodriguez was unwilling to answer questions posed by Counsel for Respondent and at various times she refused to listen to questions during her cross examination. She had to be admonished to answer questions asked by counsel for the Respondent. At one point, Rodriguez became so uncooperative on cross-examination that she refused to list the four programs she had worked on while she was employed by Respondent. Rodriguez' testimony was replete with inconsistencies and she constantly contradicted her own testimony. I find that Rodriguez was not testifying to the facts as she recalled them but was tailoring her testimony in ways that she perceived would hurt Respondent and help herself. Having observed Rodriguez during her lengthy testimony and having carefully read the transcript, it is impossible to say what might be true in all of the testimony that was obviously fabricated by Rodriguez in an effort to cast Respondent in an unfavorable light. I find that Rodriguez' testimony is unreliable and I shall not credit it.

Iris Almanzar's testimony shows that she did not recall many things about her employment at Alianza. She could not correctly name the two programs she worked in, she testified contrary to the documentary evidence and she often contradicted her affidavit given to a Regional Office agent at a time close to the events about which she was testifying. As will be seen below, I shall not credit Almanzar where her testimony is contradicted by more accurate witnesses.

As will be discussed below, Cecilia Salcedo changed her testimony from two affidavits given to a Regional Office agent and she refused to acknowledge facts which were set forth in documents placed before her at the instant hearing. My observation of Salcedo at the hearing was that she was a highly intelligent and resourceful witness and that whenever she was confronted with an inconvenient question she devised an answer to avoid any unfavorable implications that would arise if instead she told the truth. I find that Salcedo's testimony is not credible and I shall not rely on it where it is contradicted by more accurate evidence.

The other witnesses called by the parties testified to the best of their recollections given the usual problems caused by the passage of time. I have evaluated their testimony accordingly.

C. Guadalupe Rodriguez

Guadalupe Rodriguez was hired in February, 1990, as the Director of the Attendance Improvement and Drop-out Prevention program which Alianza was beginning to implement at George Washington High School pursuant to a contract it had obtained from the New York City Board of Education.³ Rodriguez supervised the staff members at the school, instructed them concerning their job duties, checked their sign in sheets and made sure that services were provided to students in accord with the Board of Education contract requirements. Rodriguez had a staff of four employees. She signed their timesheets as their supervisor.

The AIDP program at George Washington High School was a success, and Alianza took over a program that another agency had been running for the Board of Education at Public School 153. Rodriguez became the AIDP director at PS 153. The understanding with the Board of Education pro-

¹Rodriguez signed both the authorization card and the authorization sheet as director of the immigration program.

²Rodriguez was sometimes identified by the name Lupe.

³ This program is often referred to as AIDP.

vided that two staff members of the former agency would be retained. In addition, Rodriguez hired Fannie Pena to work at the school. Rodriguez was responsible for supervising the staff, ensuring that the contract goals were met and that services were provided to students, that home visits were made and that employee timesheets were completed so that the staff could be paid. Rodriguez exercised the initiative to develop an after school portion of this program.

After 1 year, Rodriguez transferred to the Family Assistance program. Her task was to develop immigration services and to train for the implementation of the CREO program which was then being planned.4 The purpose of the CREO program was to help drug addicts and Rodriguez was supposed to develop a plan to deal with the immigration and citizenship needs of the CREO participants. Rodriguez underwent 1 year of training in preparation for the launching of the CREO program, but when it was ready to receive clients she informed Perez that she did not want to deal with drug addicts and that she was afraid of conducting home visits to see these clients. Perez told Rodriguez that he was disappointed and that it was unfair of her to withdraw at the last minute after 1 year of discussions and training. Nevertheless, Perez recruited someone else to perform the role that Rodriguez had been preparing for and Rodriguez continued to develop and seek funding for the immigration component of the program.

In 1993, Rodriguez assumed the title of director of immigration services and was assigned by Perez to focus exclusively on the immigration needs of the existing clients of Alianza. As the director of immigration services for Alianza, Rodriguez had a staff that fluctuated seasonally. During the summers, there was an influx of workers who were employed pursuant to a City of New York summer youth employment program; in 1993 Rodriguez had 15 to 20 students in the immigration project and in 1994 she had 8. Rodriguez signed the work sponsor agreement for the summer youth employees as the "Director Immigration." In addition, employees of Alianza were assigned as supervisors of the summer youth employees under the direction of Rodriguez. These supervisors were chosen after interviews conducted by Rodriguez and Marlon Guerrero, the director of education and employment at Alianza. The testimony of Sandino Sanchez, a member of the steering committee, establishes that Rodriguez fired one of these supervisors named Jose Duran. Rodriguez had a permanent staff member named Kares Alvarado who was a year round employee of Alianza. Rodriguez directed the work of the supervisors and of Alvarado. Other permanent staff members of Alianza were directed to work in the immigration program as a mandatory part of their duties, and their schedules were changed so that they could be assigned to the immigration program.⁵ Employees in the immigration program helped process citizenship applications and taught citizenship classes. The testimony of Guerrero, the documentary evidence and Rodriguez' own affidavit show that Rodriguez instructed all the staff members in their duties. Rodriguez interviewed the summer staff, trained them in their job duties, assigned them their tasks, evaluated their work, and saw to it that they were paid. The summer employees were paid from the Alianza budget pursuant to a contract with the Department of Employment of the City of New York. Alianza gave employee timesheets which had been approved by Rodriguez to the Department of Employment, and the City then cut the checks and gave them to Alianza for distribution to the summer employees. Alianza had the power to fire the summer employees if it deemed it expedient to do so and Rodriguez fired at least one summer youth employee.

Rodriguez was a member of the steering committee from its inception. Indeed, Rodriguez served on the planning committee that developed the steering committee structure. Rodriguez participated actively in the steering committee and voted on such issues as changes to employee job descriptions on October 29, 1993, the adoption of a method of employee evaluation and specific employee evaluation forms on March 4, 1994, and the ongoing discussion of an employee health plan in 1994. Rodriguez was active in steering committee discussions of new programs which were proposed for Alianza. The steering committee was intimately involved in questions of hiring and firing and Rodriguez was active on these matters as well. When the steering committee debated hiring new employees for the Family Center, Rodriguez objected to the proposed hiring of Bonita Perez and she was not hired. When Executive Director Perez proposed firing employee Ricardo Rainua for making an inappropriate statement in a parent meeting, Rodriguez fought in the steering committee for Rainua to be placed on probation and the steering committee overruled Perez and supported Rodriguez' position that Rainua be given probation. After Rainua was involved in another incident, the steering committee decided to fire him. On various occasions, Rodriguez brought disciplinary issues to the steering committee and asked that action be taken. She recommended that employee Jose Duran of the La Plaza program staff be fired and he was terminated in 1993.6 Rodriguez was an extremely influential and powerful figure at Alianza.

Perez testified that from the first, Rodriguez was a difficult employee. She had personality conflicts with people she came into contact with on a day to day basis and she did not exercise good judgment. Early in Rodriguez' employment, a client Rodriguez was working with manifested serious psychiatric symptoms and Perez called emergency personnel who eventually committed the client to the New York Psychiatric Institute. Perez and Rodriguez attended a meeting called by the Institute to discuss the client's placement, and when they walked into the room, they were shocked to see that Rodriguez' daughter was in attendance. Rodriguez and her daughter then proceeded to trade accusations about the young man's affections and about witchcraft. Perez testified that he was horrified, and that later when he counseled Rodriguez about the inappropriateness of her actions Rodriguez refused to acknowledge that she had made any mistakes in her handling of the situation. Although members of the steering committee told Perez to fire Rodriguez, he did not. Perez explained that Rodriguez was a force in the community and had long been a recognized activist on behalf of immigration rights. She was active in many other organizations and she was influential in the community. In 1994, Su-

⁴CREO stands for Center for Rehabilitation, Education and Orientation.

 $^{^5\,\}mathrm{These}$ staff members included Jocelyn Aponte, Claudio Seriano, Miriam Mejia, and Dulce Ramos.

⁶LaPlaza is a community school project of Alianza.

pervisor Jocelyn Aponte complained to Perez that Rodriguez was spreading rumors about her sexual orientation. Aponte and Rodriguez had been friends but now Aponte asked Perez to tell Rodriguez to stop discussing Aponte at work. Various members of the steering committee told Perez that Rodriguez took up too much time at meetings with her own personal complaints and that she was disruptive and created conflict without producing for Alianza. In 1993, Director of Personnel Ramos told Perez to fire Rodriguez. Angelo Alonso, the director of operations, complained to Perez that Rodriguez held him personally responsible for every problem with the health plan that was adopted by Alianza and he asked that Perez fire Rodriguez for putting unnecessary pressure on him and being disruptive. When Perez spoke to Rodriguez about this, Rodriguez accused Alonso of spying within the agency for the FBI. Sandino Sanchez, a member of the steering committee, told Perez to fire Rodriguez because she complained about Sanchez and undermined him with his own staff.

Director of Administration Saltini testified that he had twice recommended that Perez terminate Rodriguez before 1994. Although Rodriguez made a contribution to Alianza, she was disruptive and in 1993 and 1994 it seemed to him that there were more and more instances in which she caused controversy. She meddled in the affairs of other program directors, trying to get their employees fired and accusing various people of dealing drugs. When she did not agree with a decision she sought to subvert the process instead of going along with the consensus. Marienela Nunez, was a supervisor in the family assistance program in June, 1993.7 Nunez testified that Rodriguez was highly controversial. She had tremendous influence in the agency because she was very articulate and very assertive. Nunez tried to keep away from her in order to avoid conflict, but Rodriguez precipitated one confrontation by criticizing Nunez' staff and questioning the service provided to an Alianza client. Rodriguez based her statements, which called for the termination of two of Nunez' staff members on information that was not current and adequate. Nunez complained to Perez and asked him to instruct Rodriguez not to meddle in the day to day operation of the program.

Perez acknowledged that he had make a mistake in not firing Rodriguez, but he believed that if she were terminated there would be an uproar because she was so vocal and it would be distracting to the agency.

Rodriguez testified that the reorganization of Alianza and the concept of service integration were major topics of discussion at steering committee and were very important to the future and growth of the agency. The annual retreat held in the summer of 1994 was to be devoted to a discussion of service integration. Rodriguez testified that she did not attend the retreat and she did not inform Perez that she planned to absent herself. Rodriguez did not offer any reason for failing to attend the retreat.

Perez testified that on July 28 while he was at the retreat location, he received a message from a staff member stating that Rodriguez would not be attending the retreat. Perez tried to contact Rodriguez and eventually he spoke to her by tele-

phone on July 29. Rodriguez told Perez that she had serious disagreements with him and would not attend the retreat. Perez replied that the retreat had been planned for a long time and that it was unfair for Rodriguez to withdraw at the last minute and that she was insubordinate. Rodriguez said she was not attending the meeting and that if Perez wanted war, then she was waging war on him. Perez told Rodriguez that she was suspended and that she should stay away from the premises of Alianza until he returned from the retreat and could speak to her further. After this conversation, Rodriguez was discussed for an entire afternoon at the retreat and on July 30 the steering committee reached a consensus decision to discharge Rodriguez. Many of the members of the steering committee recommended to Perez that Rodriguez should be fired for her failure to attend the retreat. For example, Saltini testified that he told Perez to fire Rodriguez. Saltini reasoned that the purpose of the retreat was to evaluate the new service integration program, the retreat had been worked on for a long time, it was very costly and attendance was mandatory for program directors and supervisors. Saltini advised Perez to discharge Rodriguez based on a history of poor performance and for her insubordination in failing to attend the retreat. Nunez also testified that she told Perez to fire Rodriguez for insubordination in absenting herself from the 1994 retreat.

When Perez returned to Alianza's premises after the retreat, he received a copy of a letter from Rodriguez to Rafael Lantigua, M.D., the Chairman of the board of directors of the Respondent.8 The heading on the letter indicates that it concerns discrimination, abuse of power and sexual harassment at Alianza. The letter sets forth Rodriguez' community service in the area of immigration rights since 1979 and states that Rodriguez has been discriminated against on the basis of sex. The letter accuses Perez of refusing to promote Rodriguez because of her gender and of failing to take action when staff members interfered with her correspondence, faxes, telephone calls, messages, meetings, and grants. The letter states that Perez refused Rodriguez' requests for expansion and more staff and that Perez engaged in abuse of power and psychological pressure. On the issue of sexual harassment, Rodriguez reserves specific examples for "the right time and place." The letter states that Rodriguez reported her complaint to an equal employment opportunity agency (without specifying which jurisdiction), but that she did not sign a complaint pending a meeting with the board of directors. The letter demands a meeting with the board members and staff of Alianza. If this condition is not met, the letter states, Rodriguez will make her complaint public so that the community and the government may decide the future of Alianza. The letter states that Rodriguez "seeks the formation of a body to represent the rights of the staff at Alianza regarless (sic), hence an union," and that "Democracy implies that the people decide who their leaders are going to be."

Perez testified that even though Rodriguez' discharge had been decided upon by the steering committee at the retreat, he did not send Rodriguez official notification of her discharge because she had requested a meeting with the board

⁷ Nunez was the director of programs and clinical personnel at the time of the instant hearing. She was a particularly reliable witness with a good recollection and an impressive demeanor while testifying.

⁸The letter is dated July 29, 1994, but it contains a postscript dated July 30; the record is not clear when the letter was actually sent

of directors as a form of appeal and the board had granted her request.

After Perez informed Rodriguez that she was suspended and that she should stay away from Alianza premises, Perez received reports that Rodriguez continued to appear at agency locations and that she had been disruptive at an Alianza public school location. As a result, Perez decided that the suspension had to be put in writing. On August 10, a letter from Director of Personnel Dulce Ramos was sent to Rodriguez advising her that she was suspended with pay until further notice. The letter informed Rodriguez that she was not to visit agency facilities and that she was to suspend communications with coworkers, clients, funding sources and the community on Alianza business. Further, Rodriguez was directed to submit a written report on her professional activities to insure that the agency could appropriately follow up on the execution of her job responsibilities.

The meeting requested by Rodriguez was held on August 16; in addition to members of the board, it was attended by Perez, Director of Personnel Ramos and Director of Administration Saltini. Rodriguez stated her complaints to the Board and the Board listened, asked questions and then it deliberated. The Board decided to sustain Rodriguez' suspension and to seek legal counsel before it made a decision how to proceed. According to Perez, it took a while for Alianza to obtain counsel on a pro bono basis. After Perez met with legal counsel, Respondent decided to implement the decision to terminate Rodriguez. A letter dated September 9, 1994, informed Rodriguez of her termination as of that date for:

- 1. Poor work performance
- 2. Misconduct
- 3. Disruptive behavior

Perez testified that Rodriguez was terminated for her misconduct in failing to attend the 1994 summer retreat, for her disruptive behavior when, in violation of her suspension, she continued to be present in facilities of the agency, and for poor work performance in that while she was suspended she sabotaged a workshop on immigration that Alianza had scheduled by calling outside firms that were to perform photography and fingerprinting services and telling them not to come to the workshop. Perez stated that Rodriguez was not fired for any activities on behalf of the Union: she was fired because she had become more disruptive in the agency and she had made the unilateral decision not to attend the summer retreat.

Perez was aware that Rodriguez had made statements in favor of bringing a union to Alianza in the past. Rodriguez was concerned with deficiencies in the health insurance benefits provided by Alianza and she was active in the search for better benefits. Before a new health plan was selected by Respondent, she called in Local 1199 to discuss its benefit package. When a different health plan was selected, Rodriguez was very critical of the plan and of the person who had researched health plan options, and she told Perez that this person was a government spy and she demanded that Perez fire him. Perez recalled that in 1992 or 1993, Rodriguez said that she was interested in organizing a union. Perez replied that he did not believe that a union would guarantee resolution of the problems facing Alianza but that it was up to Rodriguez. The coard chairman, Dr. Lantigua, told

Perez that Rodriguez had mentioned forming a union in 1992 and 1993 and that he had given Rodriguez the addresses and telephone numbers of a few unions. Rodriguez testified that in March, 1994, she spoke to Lantigua about briging a union to Alianza; Lantigua told her that he would support an organizing drive. Perez denied that he had ever said that he would fire anyone who supported a union.⁹

Raquel Ramos, a former supervisor and AIDP program director at Alianza testified that in May 1994, she held a meeting at her apartment to discuss organizing a union. Rodriguez and others were present and they decided to draft a contract. This document, dated June 15, 1994, is entitled "Support Group Pro Alianza Dominicana, Inc." and it states that the group seeks a union. The signers of the document, including Raquel Ramos and Rodriguez, are named as the policymaking body of the association and they promise to maintain the confidentiality of all of their discussions. There is no evidence that this document was disclosed to anyone before the instant hearing. Ramos testified that on June 28, 1994, she was in Perez' office for a meeting. According to Ramos, during this meeting Perez made the statement that, "if he ever found out that employees of Alianza were organizing proor to help him-pro or con him, that he will fire them immediately, even it was Lantigua's favorite." Ramos did not ask for an explanation of this statement, and in Ramos' description of the entire conversation the statement appears totally out of context. There is no evidence that Perez was aware of the May 1994, meeting and he testified that he had not seen the May contract before the instant hearing. It is not clear what Perez was referring to in the statement attributed to him by Ramos. I can only conclude that Ramos had an incomplete recollection of what Perez actually said because, standing alone, this phrase does not make sense. One is left to wonder what is meant by the idea that employees would be organizing pro or con Perez. Certainly, there is no mention of a union in Raquel Ramos' testimony about Perez' comment. This statement is too unclear for me to give it any weight.

Director of Administration Saltini testified that it was known in 1992 that Rodriguez had wanted to bring in a union to provide health care insurance for Alianza. At that time, Perez told him that he did not think a union was necessary but that if the employees wanted a union they would take a vote and there would be a union at Alianza. Saltini stated that Perez did not mention anything about Rodriguez and union activity after 1992. Rodriguez did not keep it a secret that she wanted to bring in a union: some program directors had told Saltini after 1992 that Rodriguez wanted to speak to their employees about a union. Saltini thought that someone had spoken about a union before the 1994 retreat; he knew that there were union supporters among the employees because a person named Tomas spoke for 20 minutes in favor of a union at a general staff meeting.

D. Iris Almanzar

Iris Almanzar testified that she was hired in January, 1994, as a case manager for Alianza's HOPE program; she was

⁹ Some of Respondent's employees are currently organized.

discharged by Alianza on October 6, 1994.10 Almanzar recalled that she was supposed to do some counseling, referrals and advocacy for clients of the agency who were afflicted with the HIV virus. Almanzar's supervisor was Julio Dicent. She worked from 9 a.m. to 5 p.m. When she was hired, Dicent informed Almanzar that she would be on probation for 6 months. After 2 or 3 months in the HOPE program, Almanzar was transferred to another program at her request because she was unhappy with the lack of supervision and structure at her initial position. Almanzar testified that she was surprised at some of the job duties she had been expected to perform in the HOPE program, claiming that she had not been informed of them before she was hired. According to Almanzar, Dicent had not prepared her for the fact that because the HOPE program was new, she would have to recruit clients through community outreach. Nor did Almanzar recall being told that part of her duties would be to distribute food to homebound AIDS patients. However, Almanzar testified that she did help distribute the food. Almanzar denied that she falsified her time sheets.

Julio Dicent, the HOPE program director, testified concerning Almanzar's brief tenure in his program. He recalled that when he interviewed Almanzar he told her that the program was new and community based and that her duties would be very broad. She would have to conduct outreach in the community to inform people and institutions about the new service which was available. There would be a lot of leg work and Almanzar would be working face to face with people in the area. Dicent testified that Almanzar lived in the community and that he expected her to be able to walk the neighborhood with comfort and he remembered that she said she wanted to "give back to her community." Dicent was disappointed that Almanzar's writing was poor, that she left confidential client notes in full view on his desk so that anyone could see them and that her use of time was poor. Almanzar spent too much time on personal telephone calls, she was away from the office without accounting for her time to Dicent, she was late for meetings and she was resistant to delivering meals to clients' homes. Dicent had to tell her to fill out her timesheets more accurately. Other members of the staff complained that they had to do her work because she was not to be found.

Marienela Nunez was a supervisor for the family assistance program when Almanzar worked for the HOPE program. Nunez shared space with HOPE, and when Dicent was out of the office Nunez was in charge of the HOPE employees. Nunez testified that she observed that Almanzar came to the office at 11 and 11:30 a.m. Often she did not call and she did not tell Nunez where she had been. Nunez stated that she had to deliver food in Almanzar's absence because Almanzar had not made the appropriate arrangements. Once the food spoiled before it could be delivered because Nunez did not have sufficient staff present to make up for Almanzar's absence. Nunez was upset and she reported to Dicent that Almanzar was not functioning properly.

On August 16, 1994, long after she had left the HOPE program, Almanzar was given an evaluation by Dicent. The evaluation was not favorable and Almanzar wrote a memo

disagreeing with its conclusions. Dicent testified that he did not evaluate Almanzar until August 16 because that is when he did all the evaluations for his staff. He acknowledged that he had not discussed the evaluation with Almanzar before he completed it even though the personnel policy calls for evaluations to be made with the knowledge and participation of employees. In early September, at Almanzar's request, he met with her and Personnel Director Ramos to discuss the evaluation. Almanzar was irate and argumentative. Ramos testified that after Almanzar told Dicent that she believed she was a good worker, Dicent began to talk but Almanzar would not listen to what he had to say, calling him a liar and screaming. When the screaming became too loud, Ramos ended the meeting.

In late winter 1994, Almanzar transferred to the CREO program where Milagros Batista, the Program Director of CREO, acted as Almanzar's direct supervisor until a permanent supervisor was hired. Batista informed Almanzar that she would be subject to a new probationary period of 6 months. Almanzar was unable to recall what the initials CREO meant but she recalled that she was supposed to perform counseling, referral work, advocacy and home visits for substance abusers. She escorted clients to family court and public assistance facilities and helped them to obtain entitlement money. When asked what a UCR was, Almanzar could not recall but stated that it was a method for recording client progress¹¹

In June, Miguelina Espiritu was hired as the permanent supervisor for the CREO program and the employees soon became discontented with her. According to Almanzar, the workers told Guadalupe Rodriguez of their discontent and she told them about "unionizing." Almanzar recalled that she signed a petition concerning problems that workers were having with Espiritu. She testified that on August 1, after the petition was signed, Espiritu told her that an attorney was speaking to her and told Almanzar to think about what she was doing because she would lose her job and get into a lot of trouble. Espiritu also told Almanzar that she knew Almanzar was part of the Union, that she would be in a lot of trouble and that Almanzar should stop what she was doing. According to Almanzar, she replied that she did not know what Batista was talking about but that if there was a union she had the right to join it. Almanzar testified that she wrote a memorandum responding to the "constant questioning" of Espiritu about the Union. The document written by Almanzar on August 4 and purporting to refer to this interrogation does not mention the Union at all or indeed any interrogation. Rather it seems to refer to some internecine office dispute involving charges of slander. Almanzar explained that Espiritu had experienced some problems at a previous place of employment and that people were spreading negative information about this throughout the agency. Espiritu threatened to sue Almanzar for defamation and Almanzar in the memo then threatened to sue Espiritu for harassment. Almanzar sent copies of the memo to Perez, Batista and Personnel Director Ramos and requested a meeting to discuss the problem.

According to Almanzar, a union was discussed when Raquel Ramos, the AIDP Program Director, was suspended.

¹⁰ Almanzar was unable to recall what the acronym HOPE stands for. The record shows that the program was entitled HOPE for "holistic orientation and preventive education."

 $^{^{11}\}mbox{UCR}$ stands for uniform case recording; it is a standard form in social work.

A number of employees, including Almanzar, signed a petition to Perez dated July 29, 1994, requesting that he revoke the suspension. Almanzar did not explain why Ramos had been suspended. The petition itself is unclear and it only mentions that Ramos visited various departments and used certain exercise classes. Ramos testified but did not elaborate on her suspension or termination except to state that she had been suspended on August 10 and terminated on September 9, 1994

Almanzar signed the union authorization petition on August 10, 1994.

Almanzar recalled that Espiritu discussed a job evaluation with her and showed her a document dated September 6, 1994. The written evaluation was not signed and Espiritu told Almanzar that the evaluation was not official until it was discussed with and signed by the Program Director, Milagros Batista. In fact, Espiritu told Almanzar, Batista should have filled in the form initially because she had had a longer opportunity to observe Almanzar than Espiritu who had only arrived 3 months ago. The unsigned evaluation rated Almanzar either satisfactory or excellent in various categories and gave her the overall rating of "Satisfactory, Meets Job Requirements." The evaluation was never signed or approved by Batista. Almanzar testified that after this conversation with Espiritu, Belinda Almonte, a client of hers who was also employed as a receptionist by Alianza, showed her a document that purported to be an evaluation. This evaluation was much less favorable. I did not admit the proffered document because Almanzar could not authenticate it as the same document shown to her by Almonte and it had not been produced from Respondent's files. Both Batista and Personnel Director Ramos stated that they had never seen this purported evaluation.

Almanzar testified that at the end of September, Batista told her that she had changed some of the items in Espiritu's evaluation because Almanzar's actual performance was not as good as had been indicated in the evaluation. During this conversation, according to Almanzar, Batista asked her if she knew anything that was going on in the Union. Almanzar said she did not know what Batista was talking about and Batista replied, "I know you are involved in the Union." Almanzar's affidavit given to the Regional Office on October 14, 1994, states, "No one from management ever asked me about my union activities from when I first started attending union meetings about August 1 through my discharge October 6." When questioned why, one week after she was fired, Almanzar did not tell the government that she had been interrogated by two different managers about her union activities, Almanzar said she was too upset.

Batista stated that she had directed Espiritu to change Almanzar's evaluation because Espiritu had not accurately reflected Almanzar's job performance. Batista explained that she had more opportunity to observe Almanzar's performance directly than Espiritu who only supervised her for a short while. The personnel procedures call for an employee and a supervisor to agree on an evaluation, but Batista never got a corrected evaluation for Almanzar from Espiritu.

Almanzar described an incident when she was criticized by Batista for not informing a client that she could be supplied with coats and shoes and socks for her children. The client had missed an important meeting with city public assistance workers because her children did not have the proper clothes. Almanzar testified that she did not know that the children did not have clothing to wear.

On another occasion, one of Almanzar's clients had repeatedly failed to attend a substance abuse program for which she was enrolled at Alianza. A New York City child welfare administration worker who had been looking for this client called Almanzar to ask about her. Almanzar told the child welfare worker that the client was not attending the substance abuse program and that she had not seen the client in weeks. A few days or weeks later, the client appeared in Alianza's office and angrily asked Almanzar why she had informed the child welfare worker that she was not attending the program. Almanzar explained that she could not lie to the City welfare worker. The client became more upset and began yelling and screaming. Almanzar testified that she became frightened and as the client walked away Almanzar raised her voice to the client and said that she would not descend to the client's level. Other employees of Alianza witnessed this scene and informed Batista that Almanzar had behaved inappropriately to the client. Although Almanzar told Batista her version of the events, Batista believed the other workers. Almanzar denied that she had screamed at drug treatment Supervisor Rena Hernandez, one of the employees who informed Batista of her behavior to the client. Yet Almanzar's affidavit states that she "raised [her] voice and told Hernandez to stop lying." Almanzar's affidavit is confirmed by Batista who testified that Rena Hernandez had informed her that Almanzar had insulted a client. When Batista and Hernandez met with Almanzar concerning the incident Almanzar yelled at Hernandez, interrupting her and calling her a liar.

Almanzar testified that she was supposed to conduct group sessions for clients in the CREO program and that she had conducted one such session. She denied that Batista repeatedly asked her to run these groups. One day, according to Almanzar, Batista had directed her to conduct a group session. Because Almanzar was on the telephone to another client, a coworker gathered the clients together and led the group session until Almanzar came in 15 minutes later. Almanzar testified that she ended the group session one hour early because the clients and the coworker reported that Batista said that they should leave early. Almanzar denied that Batista was angry that the session ended early and she denied that she was fired by Batista for ending the session 1 hour earlier than scheduled.

Almanzar denied that Batista ever counseled her or reprimanded her about her job performance. She denied that she had been reprimanded for signing in on her timesheet for days when she had been absent. She denied that Batista counseled her for lateness or for failure to maintain her case files.

Batista testified that Almanzar's timesheets were not accurate. Batista noticed that Almanzar signed her timesheet as present for a day when she was actually absent and that the timesheets did not accurately reflect the time Almanzar arrived for work. The documentary evidence shows that Almanzar's timesheets had indeed been corrected on more than one occasion.

Batista testified that the purpose of the CREO program was to provide drug treatment programs and preventive work for the purpose of keeping families together and preventing children from being placed in foster care. When Almanzar

was hired for the CREO program, Batista told her that her job was to provide case management for preventive services. This meant that Almanzar was to be part of a team and communicate with preventive workers and drug treatment workers. Communication and writing were important in order to maintain documents and a case log for the entire family and in order to provide the detailed information required by government agencies. Batista recalled that when one of Alianza's funding agencies conducted an audit, she was shocked that Almanzar apparently did not know what should be in a case record, that she had not done an assessment of the families she was responsible for and that she did not know how to complete the UCR forms showing what the clients' needs were and the agency goals for the client. Batista assigned another employee to help Almanzar correct and rewrite all of her case notes. Batista testified that Almanzar's clients did not attend the programs they were enrolled in and did not seem engaged in the aims of the agency. As a result, Batista was obliged to go with Almanzar on a home visit in order to get the clients back into the program. Batista described a case assigned to Almanzar where the children were being endangered. The person with legal custody of the children, (their grandmother), was in the hospital and the mother was on drugs. Almanzar had known that the grandmother was in the hospital but she had not done anything to assure the children's safety. Batista arranged to get public assistance for the mother and admitted her into a program so that she could become drug free and care for her children.

Batista faulted Almanzar for not conducting group sessions for her clients. A supervisor gave Almanzar guidance on how to conduct a group but the supervisor later informed Batista that Almanzar was still refusing to conduct groups. Batista decided to pay close attention to a group that Almanzar was to conduct on October 6, 1994, at 1 p.m. Batista had checked with Almanzar that day and told her to be ready. At 1 p.m., Batista saw that the group participants were there but that Almanzar was not present. Almanzar walked by at 1:20 on the way to the group and then at 1:30 Batista saw Almanzar leaving for lunch. The session should have gone on until 2 p.m. Batista testified that she spoke to Director of Personnel Dulce Ramos and Executive Director Perez, and that she made the decision to fire Almanzar as a result of the October 6 incident with the group session where Almanzar did not follow her instructions. Almanzar was at the end of her probationary period. Batista believed that Alianza was taking too many risks in continuing to employ Almanzar as a case worker. Batista testified that she did not know that Almanzar was involved in any Union activities and she denied ever questioning Almanzar about the Union. Batista was aware that Almanzar was one of the employees who signed several petitions concerning the CREO program, but none of these mentioned a union.

E. Cecilia Salcedo

Cecilia Salcedo began work on November 28, 1994 in the AIDP program for children on probation. Salcedo's friend, AIDP Program Director Yaniris Urbaez, arranged for Salcedo to be hired. Although Salcedo possessed only a high school diploma and had applied for a position as a receptionist or secretary, Urbaez got her a job as a family case worker.

Salcedo conceded that she did not have the training to document her activities as required by Alianza's record keeping methods. Salcedo's direct supervisor was Jocelyn Aponte.

Salcedo testified to an indecipherable spy plot which began on December 8, not even 2 weeks after she was hired. The outline of her testimony was to the effect that Urbaez asked her to spy on the Union and to keep an eye on her coworker Eladio Hernandez, a suspected union supporter. According to Salcedo, Urbaez asked her to find out where a union meeting was to be held and promised her \$3000 and job security if she complied. Salcedo testified that she refused to be a spy because Aponte and Eladio Hernandez did not get along and Aponte had told her to stay away from Eladio. But Urbaez insisted, telling Salcedo to ignore Aponte and to pretend that she was from the Union. Salcedo then began speaking to Eladio, and Urbaez kept pressing her for news of the Union. One week later, Aponte accused Salcedo of being a spy for the Union. There was a confrontation in Urbaez' office involving Aponte and Salcedo. Sometime later, something went wrong with Aponte that embarrassed Salcedo. According to Salcedo, on May 16, she spoke to Board Chairman Dr. Lantigua after a meeting and told him that Aponte had harassed, attacked and abused her and that Urbaez had promised her \$3000. This was Salcedo's entire recollection of her conversation with Lantigua until Counsel for the General Counsel led her to testify that she told Lantigua about the Union. Lantigua told Salcedo that it was not good for Alianza for her to spy and told her not to worry about her job. 13 Salcedo said that right after this she received a disciplinary memo from Aponte accusing her of neg-

Salcedo received an evaluation signed by Urbaez dated February 28, 1995. The evaluation rated her "Good" in some areas and "Improvement Needed" in many areas related to record keeping and planning for clients' needs. Salcedo did not agree with this evaluation, but she testified that she signed it because Urbaez said that she would change it. However, the evaluation was not changed. On cross-examination, Salcedo resisted admitting that Urbaez had personally written unfavorable comments on the evaluation concerning record keeping and documentation, and she would not concede that Urbaez had written that Salcedo and Aponte had problems and that Salcedo had been told to abide by Aponte's directives.

Salcedo testified that she had a problem getting along with Aponte and that she began speaking with Eladio Hernandez contrary to Aponte's wishes. Salcedo argued with Aponte constantly, and Urbaez told Salcedo that Aponte had accused her of hanging up the telephone on Aponte. Salcedo ascribed all of these disagreements to the fact that she was pretending to be in the Union so that she could talk to Eladio Hernandez and be a spy. However, Salcedo also testified that she had stress on the job because she was caught between two people who hated each other and were fighting for power, namely Urbaez and Aponte, and she was "getting crazy" because she was in the middle.

Salcedo recalled that Perez met with the AIDP workers and told them that their record keeping had to improve dramatically. United Way, the funding source for the drop-out prevention program, had reviewed the case files and had

¹² Salcedo often visited Urbaez at home.

¹³ Salcedo testified that Lantigua was in favor of the Union.

warned Alianza that if record keeping did not improve the funding was in jeopardy. Perez told the employees that they had to concentrate all their efforts on getting the case files in shape. Both Perez' testimony, which I credit, and the documentary evidence show that United Way had found serious problems with record keeping in the program in the Winter and Spring of 1995, and had threatened to end the funding unless the problems were corrected. Perez took personal charge of the program and reviewed the student file folders at each school. Perez testified that when he reviewed the student charts prepared by Salcedo he found that they were of such poor quality that he could not make any sense of them. He characterized Salcedo's record keeping as "atrocious." Perez decided that the problems in the AIDP program stemmed from ineffective supervision and a lack of skills among the staff. As a result of his conclusions, Program Director Urbaez was replaced and Supervisor Aponte was demoted.14 Perez had seen Salcedo's evaluation and he had seen a memorandum stating that Salcedo was belligerent to her immediate supervisor and resisted supervision. Perez, who made the decisions concerning hiring in the AIDP program for the new school year, stated that he decided not to rehire Salcedo for the new school year because she had not improved her performance after being urged to do so and her skill levels were low. Perez did not believe that Salcedo was able to improve.

Salcedo testified that on the last day of school, June 30, 1995, Urbaez told her that she "had the job" but that she should collect unemployment insurance for 3 months. However, Salcedo conceded that all the employees in the AIDP program had to reapply for their jobs. After Salcedo reapplied, she had an interview with Personnel Director Ramos who told her that her evaluation was not good. Salcedo replied that Urbaez had promised to change the evaluation. Salcedo was not rehired for the new school year. Ramos testified that Salcedo was not rehired because of her poor performance.

Perez testified that he had never been informed that Salcedo engaged in any activity on behalf of the Union. He recalled that Urbaez informed him in Spring 1995 that Salcedo had approached her and offered to spy on the Union. Urbaez was offended because she had been a shop steward in her previous place of employment and she told Salcedo not to make such a suggestion. Salcedo never told Perez that anyone asked her to spy on the Union. In May 1995, Lantigua called Perez and informed him that Salcedo said that Urbaez asked her to spy on the Union. He checked again with Urbaez to make sure this was not so.

When Salcedo learned that she had not been rehired, she signed a charge alleging that she was discharged because the Respondent believed that she was active in the Union. The record is clear that Salcedo never engaged in any Union activity at all. After filing her charge Salcedo gave four affidavits to the Regional Office. The first two affidavits do not mention anything about Urbaez asking her to spy for the Union. Instead they say that Aponte accused Salcedo of spying for Urbaez. These affidavits represent the truth behind some of Salcedo's difficulties at Alianza. Salcedo was a personal friend of Urbaez, Aponte and Urbaez were at each other's throats and Salcedo, in her own words, was caught in

the middle between two people fighting for power. After giving these two affidavits, Salcedo's charge was dismissed by the Regional Office and she went to the Union for advice. Then, Salcedo for the first time gave an affidavit that mentioned the Union and provided the basis for a finding that she had been unlawfully denied reemployment. Salcedo's explanation for failing to mention the Union in the two affidavits she gave right after she filed a charge was that she was afraid to tell her whole story because she thought that Respondent might still give her back her job. Of course, the affidavit was confidential and Salcedo had no reason to imagine that a Regional Office agent would wrongfully disclose it to Respondent.

F. Discussion and Conclusions

As set forth above, I shall not rely on Rodriguez' testimony. Based on the credited testimony of Perez, Sandino Sanchez and Marlon Guerrero, I find that as Director of Immigration Services, Rodriguez hired employee Kares Alvarado and the supervisors of the summer youth workers, had the authority to and did fire supervisors in the program, instructed and trained the immigration staff workers and assigned tasks to and directed the work of all the immigration workers. I find that Rodriguez was a supervisor within the meaning of Section 2(11) of the Act. Further, based on the credited testimony of Perez, Raymond Saltini and Marienela Nunez, I find that as a member of the steering committee, Rodriguez set policies for the agency; she made decisions concerning the adoption of new programs and the ongoing administration of agency programs and operations, she formulated personnel policies and employee evaluation policies, she voted on employee health plans and on matters concerning the hiring and firing of employees, and she decided which budget lines would be eliminated and which employees should be laid off in response to diminished funding. I conclude that Rodriguez was a managerial employee who was "involved in developing and enforcing employer policy." NLRB v. Yeshiva University, 444 U.S. 672, 682 (1980). Rodriguez thus had no protected right Under the Act to engage in activities on behalf of the Union, and management had a right to expect her undivided loyalty.

Moreover, I find that Rodriguez' known position in favor of a union and her activities on behalf of the Union herein did not play any part in her discharge. First, there is no credible evidence of antiunion animus on the part of Respondent. Second, the testimony of Perez, Ramos, Nunez and Saltini shows that Rodriguez had been a disruptive employee whose position as an activist in the community had protected her from the consequences of her behavior. During the course of Rodriguez' tenure at Alianza, Perez had been advised to discharge Rodriguez by Ramos, Saltini, Alonso, and Sanchez but he had refrained from taking this step because he feared the turmoil that would ensue. Finally, when Rodriguez informed Perez by telephone on July 29 that she would not come to the retreat because she had serious disagreements with him, he replied that her behavior was insubordinate and that she was suspended. Perez told Rodriguez that he would speak to her when he returned from the retreat and that in the meantime she should stay away from Alianza's premises. Perez, Saltini and Nunez testified convincingly that Rodriguez' failure to attend the retreat was extensively discussed and that the decision was made by the steering com-

¹⁴ Urbaez is no longer employed by Respondent.

mittee on July 30 that Rodriguez should be discharged for her absence from this important and long planned meeting. Rodriguez' letter to Lantigua contains a post script stating that she had been informed that she was terminated thus demonstrating that Rodriguez had her sources within the steering committee who told her of the decision that had been reached. The decision was not implemented because Rodriguez asked for a meeting with the Board of directors, and after the Board upheld the decision to discharge Rodriguez, it took some time for Alianza to obtain pro bono legal counsel. Thus, it was not until September 9 that Rodriguez was given formal notification that she was fired. Although Rodriguez had made sporadic comments over the years to the effect that she wanted to bring a union to Alianza, Rodriguez did not communicate with the Union herein until after she had been informed that the steering committee had decided during the retreat that she should be discharged. Larancuent testified that when Rodriguez telephoned him to talk about organizing she said that she was being discharged. On the same day, Rodriguez drafted her letter to Lantigua asserting her complaints of gender discrimination, abuse of power and psychological pressure and stating that she would seek the formation of a union. Thus, Rodriguez' support for the Union herein did not begin until after she learned that the steering committee had decided to terminate her. Although the Board of Directors later affirmed this decision, there is no evidence that the Board's action related to Rodriguez' signing of a Union card or petition. Indeed, all of the evidence shows that Chairman of the Board Lantigua was in favor of a union; Salcedo testified that Lantigua had expressed support for a union and Rodriguez recalled that 3 months before she was discharged, Lantigua had promised support for a union organizing drive at Alianza.

The General Counsel urges that the timing of Rodriguez' formal termination letter shows that she was discharged for filing a charge in violation of Section 8 (a) (4). I have found above that when Rodriguez told Perez that she was not coming to the retreat, he responded that she was suspended. The next day, July 30, 1994, the steering committee decided to terminate Rodriguez. In the meantime, Perez received reports that Rodriguez was continuing to appear at various Alianza locations contrary to his instructions. A letter setting forth the terms of Rodriguez' suspension was sent to her on August 10. No formal action to implement the steering committee's decision could be taken until Rodriguez met with the board of directors on August 16 pursuant to her request. That day, the Board decided to uphold the steering committee and it decided to retain counsel, a process which took several weeks. In the meantime, the Union filed a charge alleging that Rodriguez' suspension was an unfair labor practice; the charge was served on Respondent on August 22. The termination letter to Rodriguez was dated September 9, 1994. I find that there is no evidence in the record to show that Rodriguez was discharged because the Union filed a charge relating to her suspension. The evidence shows that before the Charge was served on Respondent, the directors had decided that Rodriguez should be discharged in accordance with the vote of the steering committee. Further, the evidence is clear that the Chairman of the board supported the formation of a Union; he would hardly have permitted Alianza to suspend Rodriguez in retaliation for her support of the Union

and then compound the retaliation by discharging her when a charge was filed in response to the suspension.

As set forth above, I did not find Almanzar's testimony to be particularly reliable because she was unable to recall important facts about her job and because her testimony is contradicted by the documentary evidence. I credit the testimony of Dicent and Batista that Almanzar's timesheets were not maintained accurately and that she claimed more working hours than she actually performed. I credit Dicent and Nunez that Almanzar shirked her duties at the HOPE program. I do not credit Almanzar that on August 1, 1994, Espiritu questioned her about the Union and threatened that she would get into a lot of trouble. The memorandum that Almanzar wrote on August 4 protesting Espiritu's words does not mention the Union at all but refers to some quarrel involving Espiritu and Almanzar related to Espiritu's previous employment. If indeed Espiritu had questioned and threatened Almanzar on the subject of the Union, Almanzar would have mentioned this in a letter of complaint written 3 days later. I do not credit Almanzar that Batista questioned her about the Union at the end of September when the two were discussing Almanzar's evaluation. Batista credibly denied this allegation. Moreover, Almanzar's affidavit given on October 14, 1994, states that she first began attending union meetings about August 1 and that no one from management ever asked her about her union activities before she was discharged on October 6. Almanzar explained the discrepancy between her affidavit and her testimony by saying that right after her discharge she was too upset to recall incidents of interrogation. This explanation is not worthy of belief: an employee filing a charge and providing an affidavit concerning a discriminatory discharge will hardly deny the major incidents supporting her claim of discrimination such as coercive questioning and threats about union activities. I credit Batista that Almanzar did not know how to keep her case records and that Almanzar did not service her clients adequately. I credit Batista's testimony, which is confirmed by Almanzar's own description of the incident, that Almanzar spoke inappropriately to a client and then yelled at a co-worker in a meeting called to discuss Almanzar's behavior. I credit Batista that Almanzar disobeyed her instructions concerning the group session held on October 6, 1994, and that this incident led directly to Almanzar's discharge. Thus, I do not find that Almanzar was discharged for union activity nor that her evaluations were lowered because Respondent believed that she supported the Union.

Cecilia Salcedo did not engage in any activites at all on behalf of the Union. Instead, General Counsel relies on Salcedo's testimony that she was pretending to be in the Union at the direction of Program Director Urbaez and that Supervisor Aponte then accused her of being a spy for the Union. The scenario continues with Salcedo complaining to Lantigua, who favored the Union, and Lantigua referring the matter to Perez. The General Counsel alleges that Perez made the decision not to rehire Salcedo because she complained about being asked to spy on the Union and because she refused to spy on the Union. As stated above, I do not find that Salcedo is a credible witness. Based on the record evidence, I find that Urbaez arranged to have Salcedo hired despite the fact that Salcedo was not qualified to perform the job of case worker. Salcedo had problems with her immediate supervisor, Aponte, and she was caught in the middle

of a long standing personal conflict between Urbaez and Aponte which, in Salcedo's own words, led to her "getting crazy." I find that Salcedo's testimony is a mass of stories made up to suit the exigencies of the situation. When Salcedo discovered that her first two affidavits were not sufficient to sustain her allegation that she was fired because Respondent believed she was active in the Union, Salcedo devised a story to fit a legal theory. I do not credit Salcedo that she was asked to spy on the Union by Urbaez and promised \$3000 for information.¹⁵ I find that Salcedo complained to Lantigua that Aponte was harassing her and that Salcedo told Lantigua a fabricated story about some intrigue relating to \$3000 and the Union. I find that Urbaez told Perez that Salcedo offered to spy on the Union but that Urbaez assured Perez on two different occasions that she had not asked Salcedo to report on Union activities. I credit Perez that he personally reviewed Salcedo's work and found it below acceptable standards. I credit Perez that Salcedo was not rehired for the new school year because she was incompetent.

To sum up, there is no credible evidence that Respondent harbored any antiunion animus and there is no credible evidence that actual or purported activities in support of the Union played any part in the dismissals of Rodriguez and Almanzar and the failure to rehire Salcedo. Further, I find that Rodriguez was a supervisor and manager of Respondent. Finally, I find that there is no credible evidence that Respondent interrogated employees about their support for the Union.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended 16

ORDER

The complaint is dismissed.

¹⁵ One thing that is clear from the record is that Alianza's employees were not shy about discussing their activities in favor of the Union with board members, managers and supervisors; it strains credulity to suppose that Salcedo would be offered a large sum to provide information about the location of a union meeting.

¹⁸ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.